

1 APPELLATE COURT NO. 71595

2 IN THE COURT OF CRIMINAL APPEALS  
3 OF THE STATE OF TEXAS  
4 AT AUSTIN

5  
6 RICK ALLAN RHOADES,

7 Appellant

8 VS.

9 THE STATE OF TEXAS,

10 Appellee.

11  
12 APPEAL FROM 179TH DISTRICT COURT OF HARRIS COUNTY,  
13 TEXAS

14 Judge J. Michael Wilkinson Presiding

15  
16  
17 STATEMENT OF FACTS

18 VOLUME XX OF 40 VOLUMES

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21  
22 Marlene Swope  
23 Official Court Reporter  
301 San Jacinto  
24 Houston, Texas 77002

25  
FILED IN  
COURT OF CRIMINAL APPEALS

MAR 5 1993

Thomas Lowe, Clerk

2560

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1 CAUSE NO. 612408

2 STATE OF TEXAS IN THE 179TH DISTRICT COURT  
3 VS. OF  
4 RICK ALLAN RHOADES HARRIS COUNTY, TEXAS

5

6 A P P E A R A N C E S:

7 For the State: Ms. Carol Davies  
8 Assistant District Attorney  
Harris County, Texas

9 For the Defendant: Mr. James Stafford  
10 Ms. Deborah Kaiser  
Attorneys at Law  
Houston, Texas

11

12

13 BE IT REMEMBERED that upon this the  
14 24th day of August A.D. 1992, the above entitled  
15 and numbered cause came on for continued voir  
16 dire examination of prospective jurors before  
17 the Honorable J. Michael Wilkinson, Judge of the  
18 179th District Court of Harris County, Texas;  
19 and the State appearing by counsel and the  
20 Defendant appearing in person and by counsel,  
21 the following proceedings were had, viz:

22

23

24

25

3 VOIR DIRE EXAMINATION BY THE COURT.

4                    Welcome back, ladies and gentlemen.

We are going to get started in the selection process this afternoon. I am going to be speaking to you for about forty minutes or so, maybe less, if you are lucky. Once I get through, we will turn it over first to the state and then to defense counsel. For the most part, we are doing this on automatic pilot about now. I told you this is our fifth week going through this process of bringing prospective jurors over here in panels, talking to you, assessing your qualifications, re-scheduling you, bringing you back for individual selection. This is a capital murder case; so, therefore, we are entitled to have individual voir dire, individual questioning of the jurors. We won't be questioning you on an individual basis as long as there is an entire panel here; we bring you back one at a time. Sometimes that process takes ten or fifteen minutes, sometimes it takes two hours that one of you is on the witness stand while we ask you questions, checking your

1 qualifications.

2 I know that you have all been  
3 technically qualified to serve as jurors across  
4 the street. I need to ask now whether or not  
5 there is anybody who can't sit on this jury for  
6 any particular reason. I am going to tell you  
7 what I mean by that. We know exactly when we  
8 are supposed to start testimony in this case.  
9 As I said before lunch, it's Monday, September  
10 28th, probably about ten, 10:15 a.m. on that  
11 day. We have other things scheduled in the  
12 interim. I have a visiting judge in my  
13 courtroom trying cases on a regular basis. We  
14 have other matters than just this capital murder  
15 case we are involved in right now, so we gave  
16 ourselves plenty of lead time to get a jury in  
17 this case and handle our motions in this case  
18 prior to September 28th, but that is our  
19 anticipated starting date. Right now, I don't  
20 see anything that could change that at all.  
21 When we start trial, while I might anticipate  
22 this case is going to be tried in a week, I am  
23 asking everybody to block out two weeks because  
24 I never know what is going to happen once we get  
25 started. I don't know how long it's going to

1 take a jury to deliberate a case once they get  
2 it and go back to the jury room and begin their  
3 deliberations, so we are asking everybody to  
4 block out a maximum of two weeks beginning  
5 Monday, September 28th. Having heard that, I am  
6 going to be asking you in a couple of moments if  
7 there is any reason you need to bring anything  
8 to our attention as to why you could not sit as  
9 a juror beginning September 28th. I am not  
10 asking if you are self-employed. I am not  
11 asking if it's a financial hardship for you to  
12 be on jury service. It is for most people. I  
13 am asking such things as: Are you on dialysis?  
14 Do you have surgery scheduled on September  
15 25th? Is your son or daughter getting married  
16 in California on September 29th and you would  
17 like to be there? Do you have prepaid,  
18 nonrefundable plane tickets for that  
19 once-in-a-lifetime trip to Paris leaving on  
20 Monday morning, September 28th? Those are the  
21 kinds of things I am asking about.

22 Having heard that, is there anybody on  
23 this panel who has any particular reason, any  
24 special reason you need to bring to my attention  
25 why you could not sit as a juror in this case?

1 One hand, two hands. I am not going to give you  
2 much more time to think about it. On the third  
3 row, that is number thirteen and fourteen.  
4 Could you come up, sir?

5 (Prospective juror James A. Y'Barbo  
6 approached the bench, and the following  
7 proceedings were had:)

8 THE COURT: This is prospective juror  
9 number 13 on panel number 5, Mr. James Allen  
10 Y'Barbo.

11 What did you need to tell us?

12 THE PROSPECTIVE JUROR: I am the  
13 corporate controller for Apple Tree Markets. We  
14 have a bankruptcy hearing scheduled on the 29th;  
15 and during that next week we have a confirmation  
16 date of probably the 12th.

17 THE COURT: Where is it being heard?

18 THE PROSPECTIVE JUROR: Here in  
19 Houston. I am not sure I am going to be in  
20 that, but I am heavily involved in preparing all  
21 the schedules and kind of on standby to be there.

22 THE COURT: Have you been subpoenaed?

23 THE PROSPECTIVE JUROR: No, I have not.

24 THE COURT: You are preparing  
25 documentation; is that what you are doing?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Have you been through this  
3 before?

4 THE PROSPECTIVE JUROR: I have  
5 testified early on in some preliminary hearings.

6 THE COURT: Just in your capacity as  
7 controller?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Any questions at this  
10 point?

11 MR. STAFFORD: Would they issue a  
12 subpoena for you if they knew you were--

13 THE PROSPECTIVE JUROR: No, they don't  
14 issue subpoenas in bankruptcy court. Usually  
15 you are there and available.

16 MR. STAFFORD: What would happen if  
17 you didn't show up?

18 THE PROSPECTIVE JUROR: Well, the  
19 judge has said--

20 MR. STAFFORD: Issue a warrant for me?

21 THE PROSPECTIVE JUROR: That is a  
22 thought.

23 THE COURT: Have a seat. We may ask  
24 you some questions later on.

25 (Prospective juror Charles H. Vervalin

1 approached the bench, and the following  
2 proceedings were had:)

3 THE COURT: This is prospective juror  
4 Charles H. Vervalin.

5 THE PROSPECTIVE JUROR: I have  
6 nonrefundable airline tickets to Colorado  
7 leaving the 21st.

8 THE COURT: Returning when?

9 THE PROSPECTIVE JUROR: A week later,  
10 about eight days.

11 THE COURT: Do you know for sure when  
12 it returns?

13 THE PROSPECTIVE JUROR: The eighth  
14 day.

15 THE COURT: On our next break, is  
16 there someone you can call to verify?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: Is it with Continental?

19 THE PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: How many people are going?

21 THE PROSPECTIVE JUROR: Just my wife  
22 and I.

23 THE COURT: And y'all have vacation?

24 THE PROSPECTIVE JUROR: That's right.

25 THE COURT: Any questions?

1 MR. STAFFORD: No, sir.

2 THE COURT: We may ask you questions  
3 later on.

4 (Before the panel)

5 THE COURT: If at any time during the  
6 course of this proceeding, you suddenly realize  
7 you do need to bring something to our attention,  
8 please raise your hand and let us know at that  
9 time. It would be appropriate at anytime while  
10 I am talking to you or either of the parties in  
11 this case. Don't just sit there silently on  
12 some information because we do need to know some  
13 of these things. It's helpful, particularly  
14 later on today when we are going through the  
15 list and asking ourselves who we want to have  
16 brought back later on in the week.

17 After I get through talking to you,  
18 each side is going to be asking you some  
19 questions. They are, for the most part, going  
20 to be asking questions of the entire array.  
21 Sometimes they will have to assume by your  
22 silence what your answers, so you do need to  
23 speak up so they don't assume by your silence  
24 incorrectly. Sometimes they will ask the  
25 entire panel, sometimes row by row. Generally,

1 at this stage, we aren't going to be asking  
2 individual questions. That will come later.  
3 Once both sides have talked to you -- and we  
4 will take a break, in case you are wondering, in  
5 about an hour and fifteen minutes or so -- we  
6 will send you out of the room, we will get  
7 together, the parties will talk to each other  
8 and make a determination of exactly which ones  
9 and how many are going to be brought back for  
10 individually questioning. When you come back  
11 for individual questioning, we usually bring in  
12 a couple of people in the morning and perhaps  
13 three people in the afternoon and you do sit  
14 here for a while, or sit in the anteroom for a  
15 while, so you need to bring reading material  
16 with you at that time because, as I said  
17 earlier, sometimes it takes ten or fifteen  
18 minutes and sometimes it's a couple of hours  
19 when we are talking to an individual.

20 I am getting weather bulletins up  
21 here. If you have your weather charts out  
22 there, it's latitude 25 north, longitude 82  
23 west at one p.m. West/northwest. So that is  
24 more of that north stuff. Not expected to come  
25 to Houston; however, we are expecting five to

1       eight inches of rain. Is that today?

2                     THE CLERK: No, Wednesday.

3                     THE COURT: I don't know how can they  
4       can tell that two or three days in advance, but  
5       we will keep you posted, as they say.

6                     Okay. Once we schedule you, we will  
7       bring you up here and give you little slips and  
8       tell you exactly where to go and what time to  
9       return. Some of you will be released for all  
10      purposes; some of you will be asked to come  
11      back. On whatever date that you come back in  
12      here and we question you individually, when you  
13      get off that stand we will let you know at that  
14      time whether or not you are selected to serve on  
15      the jury. If not, you go about your business.  
16      If you are selected to serve, we will give you  
17      some additional instructions, some admonitions,  
18      some more paperwork and tell you exactly when to  
19      be back here and where to report on September  
20      28th for jury service. We have already selected  
21      nine jurors in this case. We are only looking  
22      for three more good men and women and one  
23      alternate, as they say.

24                     When we start testimony on September  
25      28th, State will go first. The defendant will

1       be arraigned in your presence, a plea will be  
2       entered. State goes first because they have  
3       the burden of proof. They will go first in the  
4       jury selection process. They will go first in  
5       calling witnesses to the stand. They will go  
6       first and last in arguing the case to you. At  
7       some point, the State will rest. The defense  
8       has the opportunity, they don't have to go  
9       forward at that time, but they have the  
10      opportunity to go forward. They may call  
11      witnesses to the stand. If they do not choose  
12      to do so, they don't have to. They don't have  
13      to call the defendant to the stand. The State  
14      can not call the defendant to the witness  
15      stand. At some point, the defense will rest.  
16      Both sides will have the opportunity to have  
17      rebuttal. They will rest and close. At that  
18      point, I will prepare the Court's Charge. That  
19      is a multi-page, typewritten instrument which I  
20      will read to you. It's going to contain all the  
21      law and all the definitions you need to know  
22      when you go back to deliberate this case. The  
23      case will be argued to you by both sides. You  
24      go back and deliberate. You return a verdict of  
25      guilty or not guilty. In any criminal case, if

1 a jury returns a guilty verdict, there is a  
2 second stage of trial. We will call that the  
3 penalty stage or the punishment stage. That is  
4 the stage where you most often hear testimony  
5 regarding a defendant's background, character,  
6 reputation, prior bad acts, previous criminal  
7 convictions, if any exist, that kind of thing,  
8 the kind of information most jurors find helpful  
9 when they are determining what the appropriate  
10 punishment should be. I prepare another charge;  
11 it's argued to you; you go back and you  
12 deliberate in the second stage of trial. That  
13 is basically what happens in any criminal case.

14 I need to see if there is anybody here  
15 who knows anything about the case that we are  
16 going to be hearing. Now, I don't know very  
17 much about the facts of this case. I am not  
18 going to allow either side to tell you what they  
19 anticipate the facts are going to be. You get  
20 to hear what happened in this case at the same  
21 time that I do, and that is when you are seated  
22 in the jury box with eleven other jurors.

23 Is there anybody on this panel who  
24 lives in Pasadena? I can't see all of you.  
25 Anybody here who lives in South Houston? That

1       is fairly consistent with the other panels we  
2       have had. It is my understanding that the  
3       offense in this case occurred on or about  
4       September 13, 1991, on Keith Street, K-e-i-t-h,  
5       in Pasadena. The complainants deceased both are  
6       Charles Allen and Bradley Dean Allen. It's my  
7       understanding that those two people are  
8       brothers.

9                 Having heard that information, is  
10         there anyone here who thinks you recognize the  
11         case that I am talking about? One hand. Any  
12         other hands? I will get back to you in just a  
13         moment.

14                 Let me introduce the principals  
15         involved in this case. The defendant is Mr.  
16         Rick Allan Rhoades.

17                 Would you, please, stand up, sir? You  
18         might have to move to the other side of this  
19         post.

20                 He is represented by Mr. Jim Stafford  
21         and Ms. Deborah Kaiser.

22                 The State of Texas is represented by  
23         an assistant district attorney, Ms. Carol  
24         Davies.

25                 Is there anyone on the panel who

1           recognizes any of these participants? On the  
2         back row? Who do you think you recognize?

3           THE PROSPECTIVE JUROR: (Indicates)

4           THE COURT: Ms. Davies?

5           THE PROSPECTIVE JUROR: Yes.

6           THE COURT: Can you tell me where you  
7         think you recognize her from?

8           THE PROSPECTIVE JUROR: A young man  
9         that I more or less adopted has been in your  
10       court.

11          THE COURT: Could you come up, please?

12          (Prospective juror Eileen Pfau Adams  
13         approached the bench, and the following  
14         proceedings were had:)

15          THE COURT: This is prospective juror  
16         number 21 on panel number 5, Ms. Eileen Adams.

17          Who was it?

18          THE PROSPECTIVE JUROR: Mark Walzer  
19         has been in your court.

20          THE COURT: The name is vaguely  
21         familiar.

22          THE PROSPECTIVE JUROR: He should be.

23          THE COURT: Tell me why.

24          THE PROSPECTIVE JUROR: Well, you put  
25         him in boot camp, and he is just about ready to

1 get out, which is good.

2 THE COURT: Did he have a  
3 co-defendant?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: What was he charged with?

6 THE PROSPECTIVE JUROR: Theft was the  
7 last one. It goes back many years. He had  
8 theft and then he had, of an automobile, and  
9 probably about -- I can't remember now.

10 THE COURT: Did you come to court with  
11 him?

12 THE PROSPECTIVE JUROR: Oh, yeah.

13 THE COURT: Was he on bond or in  
14 custody?

15 THE PROSPECTIVE JUROR: He is in  
16 custody.

17 THE COURT: Was he, when you came to  
18 court with him, in custody?

19 THE PROSPECTIVE JUROR: In custody.

20 THE COURT: Who represented him?

21 THE PROSPECTIVE JUROR: Elaine Shaw.

22 THE COURT: How long ago was this?

23 Must have been three or four--

24 THE PROSPECTIVE JUROR: Yeah, because  
25 he graduates Wednesday.

1                   THE COURT: Did he live with you prior  
2 to the time?

3                   THE PROSPECTIVE JUROR: For a short  
4 period of time, yes.

5                   THE COURT: Do you recognize Ms.  
6 Davies from the courtroom?

7                   THE PROSPECTIVE JUROR: Yes. Both of  
8 you from the courtroom.

9                   THE COURT: You were there the day the  
10 plea was entered?

11                  THE PROSPECTIVE JUROR: Yes, sir.

12                  THE COURT: You realize there are  
13 dozens and dozens, so I can't remember.

14                  THE PROSPECTIVE JUROR: Yes.

15                  THE COURT: Is there anything about  
16 that experience regarding Mr. Walzer that would  
17 cause you to be biased or prejudiced one way or  
18 the other?

19                  THE PROSPECTIVE JUROR: No.

20                  THE COURT: When he gets out of boot  
21 camp and is on probation, is he going to be  
22 living with you?

23                  THE PROSPECTIVE JUROR: Yes.

24                  THE COURT: Has he been in contact  
25 with you?

1                   THE PROSPECTIVE JUROR: Yes, sir.

2                   THE COURT: Are you making  
3                   visitations?

4                   THE PROSPECTIVE JUROR: Yes.

5                   THE COURT: He is not legally formally  
6                   adopted?

7                   THE PROSPECTIVE JUROR: No. He is a  
8                   kid that needed help that I took in.

9                   THE COURT: Do you have a child about  
10                  his own age?

11                  THE PROSPECTIVE JUROR: Yes.

12                  THE COURT: From high school?

13                  THE PROSPECTIVE JUROR: Yes.

14                  THE COURT: Which high school?

15                  THE PROSPECTIVE JUROR: Clear Lake.

16                  THE COURT: Do you have any questions  
17                  of her at this time?

18                  MS. DAVIES: Did you and I ever talk  
19                  about the case directly?

20                  THE PROSPECTIVE JUROR: No.

21                  THE COURT: And I have not talked  
22                  directly?

23                  THE PROSPECTIVE JUROR: No. I always  
24                  just sat in the back and watched.

25                  THE COURT: Just have a seat.

1 (Before the panel)

2 THE COURT: Was there anybody else who  
3 recognized any of the participants?

4 An indictment, of course, was returned  
5 in this case, it being a felony case. How many  
6 people have ever sat on criminal juries in the  
7 past? Four or five. Is there anybody here who  
8 has ever served on a Grand Jury? No hands. A  
9 Grand Jury has a very different function than  
10 that of a jury which will be sitting in this  
11 case. The Grand Jury is not deciding issues of  
12 guilt. A Grand Jury is determining whether or  
13 not some reason exists that a finder of fact,  
14 either a jury or a judge, should determine a  
15 defendant's guilt. They are only saying there  
16 is some reason here that we think somebody else  
17 should make the determination. Guilt doesn't  
18 enter into it when they are voting to true bill  
19 or no bill a case. Takes at least nine jurors  
20 in a Grand Jury to true bill a case. Generally  
21 what happens is a representative of the district  
22 attorney's office goes in for a few minutes and  
23 gives a Grand Jury a shorthand rendition of how  
24 that person viewed the case or what that person  
25 determined from certain reports, that kind of

1       thing, and the Grand Jury makes a decision.  
2       There are dozen and dozens of cases which are  
3       true billed everyday in front of grand juries.  
4       In fact, here in Harris County we keep five  
5       sitting in the state courts at all times meeting  
6       twice a week, each one of those five grand juries.

7                  The Grand Jury indictment is no  
8       evidence of guilt whatsoever. The indictment is  
9       merely a legal pleading. We have to have an  
10      indictment before we can proceed to trial. We  
11      either have to have an indictment or a waiver of  
12      indictment. So it's the means whereby we are  
13      here today. It lets the defense know exactly  
14      what the defendant is charged with; it sets out  
15      for the State exactly what they have to prove,  
16      what we refer to as the material elements of the  
17      offense. I will give you an instruction in  
18      this, as in every criminal case, later on when a  
19      jury is charged that the Grand Jury indictment  
20      is no evidence of guilt whatsoever and is not to  
21      be considered by you as any evidence.

22                  The Grand Jury indictment alleges that  
23      in Harris County, Texas, on or about September  
24      thirteen, 1991, the defendant, Rick Allan  
25      Rhoades, did unlawfully intentionally and

1           knowingly cause the death of Bradley Dean Allen  
2           by stabbing Bradley Dean Allen with a deadly  
3           weapon, namely, a knife, and during the same  
4           criminal transaction the defendant did then and  
5           there unlawfully intentionally and knowingly  
6           cause the death of Charles Allen by stabbing  
7           Charles Allen with a deadly weapon, namely, a  
8           knife, and by striking Charles Allen with a  
9           deadly weapon, namely, a bar.

10           So I have read to you information from  
11           the indictment giving you some other  
12           information, which is basically the nature in  
13           which the offense is alleged to have occurred,  
14           the date, September 13, 1991, the names of the  
15           two complainants, Charles Allen and Bradley Dean  
16           Allen, and a general location, Keith Street in  
17           Pasadena, Texas.

18           Now, having heard all of that, is  
19           there anyone other than the lady on the first  
20           row who thinks you might have heard about this  
21           case? Okay.

22           Ma'am, could you come up, please.

23           (Prospective juror Regina Polk  
24           approached the bench, and the following  
25           proceedings were had:

1                   THE COURT: This is number 2 on panel  
2        5, Ms. Regina Polk.

3                   What do you think you heard?

4                   THE PROSPECTIVE JUROR: I had saw the  
5        original report of it on Channel 13 when it  
6        happened.

7                   THE COURT: Can you give me more  
8        information?

9                   THE PROSPECTIVE JUROR: They were  
10      musicians of some sort, I think, if it's the one  
11      I am thinking about. That's about it. But I  
12      just remember hearing about them.

13                  THE COURT: It was about a year or so  
14      ago, so you think that is about the same time  
15      frame?

16                  THE PROSPECTIVE JUROR: Yes.

17                  THE COURT: Does anybody happen to  
18      have the Code handy?

19                  Whatever it was you heard, by the way,  
20      you think it was only on TV, not on the radio or  
21      in the newspaper?

22                  THE PROSPECTIVE JUROR: I usually do  
23      read the newspaper, but I don't remember  
24      anything.

25                  THE COURT: You think it was Channel

1           13 because that is what you usually watch?

2           THE PROSPECTIVE JUROR: Yeah.

3           THE COURT: In your mind, do you have  
4         any conclusion as to the guilt of the defendant  
5         in this case?

6           THE PROSPECTIVE JUROR: No.

7           THE COURT: I am not suggesting that  
8         you should have, but I have to ask the question.

9           Is there anything about what you heard  
10        that would influence you in this action in any  
11        way?

12          THE JUROR: I don't think so.

13          THE COURT: I am just going to  
14        reiterate that you are suppose to hear the  
15        evidence and make a determination as to guilt  
16        based on what you heard in the courtroom.

17          THE PROSPECTIVE JUROR: Yes.

18          THE COURT: So you don't think that  
19        whatever it was that you heard would affect your  
20        actions in any way?

21          THE PROSPECTIVE JUROR: No, sir.

22          THE COURT: Whatever it was that you  
23        heard, do you think you would still be able to  
24        render an impartial verdict based on the law and  
25        evidence?

1                   THE PROSPECTIVE JUROR: Yes, sir.

2                   THE COURT: Do you have any questions?

3                   MS. KAISER: Do you remember any  
4 story on TV regarding an arrest or anything like  
5 that?

6                   THE PROSPECTIVE JUROR: It was just  
7 the original.

8                   MS. KAISER: Nothing further.

9                   THE COURT: Just have a seat.

10                  (Prospective juror Forrest Lynn Luce  
11 approached the bench, and the following  
12 proceedings were had:)

13                  THE COURT: What was it that you  
14 heard?

15                  THE PROSPECTIVE JUROR: Sounds like  
16 the one where the two guys had just built a new  
17 home and a recording studio and they were  
18 murdered. Just spent the first night there.

19                  THE COURT: Where did you hear your  
20 information?

21                  THE PROSPECTIVE JUROR: Newspaper and  
22 on the news, TV news.

23                  THE COURT: What do you normally watch?

24                  THE PROSPECTIVE JUROR: Usually  
25 Channel 2.

1                   THE COURT: So, probably whatever you  
2 heard, if this is the same case, was on Channel  
3 2 television and from the daily newspaper?

4                   THE PROSPECTIVE JUROR: Houston  
5 Chronicle.

6                   THE COURT: Is that the paper you  
7 subscribe to?

8                   THE PROSPECTIVE JUROR: Yes, sir.

9                   THE COURT: Do you remember if you  
10 read about this on more than one occasion or saw  
11 it on TV on more than one occasion?

12                  THE PROSPECTIVE JUROR: I don't  
13 remember. I know I saw it on TV and read about  
14 it in the paper.

15                  THE COURT: Do you recall whether or  
16 not you heard about it at the time of the  
17 alleged offense?

18                  THE PROSPECTIVE JUROR: Yes, sir, soon  
19 after that, yes, sir.

20                  THE COURT: Do you recall whether you  
21 heard or read anything about any kind of arrest  
22 in the case?

23                  THE PROSPECTIVE JUROR: No, I didn't  
24 hear about that.

25                  THE COURT: Just the initial

1 discovery?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: If we are talking about  
4 the same case?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Whatever it was that you  
7 heard or saw about this case, is there  
8 established in your mind any conclusion as to  
9 the guilt or innocence of the defendant that  
10 would influence you in any action of finding a  
11 verdict?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: Do you feel that you would  
14 be able to render an impartial verdict on the  
15 law and the evidence?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Any questions?

18 MS. KAISER: No.

19 MS. DAVIES: No.

20 THE COURT: Just have a seat.

21 (Before the panel)

22 THE COURT: You are beginning to see  
23 why it takes so long in a case like this. If at  
24 any time there is somebody who thinks you know  
25 something about this case, do bring it to our

1       attention. None of these are  
2       disqualifications. The other side is simply  
3       entitled to know -- well, each side is entitled  
4       to know this kind of information, but there may  
5       be information that would be helpful to one side  
6       or the other in making a determination of how  
7       they use their strikes in this case. While I am  
8       asking you questions and the counsel are asking  
9       you questions, we are going to encourage you to  
10      answer just as honestly as you possibly can.  
11      There are no right or wrong answers to any of  
12      the questions we put to you. The correct  
13      response is an honest response. We don't want  
14      you loading up on us. We don't want you  
15      answering in such a way that you think will get  
16      you struck from this jury or answering in such a  
17      way that you think will make sure that you get  
18      to serve on this jury. We do get upset when we  
19      think people are handling themselves in that  
20      fashion, also. So just answer as honestly as  
21      you possibly can.

22           When they are asking you questions,  
23           sometimes they ask you something that the answer  
24           to which is embarrassing perhaps or simply is  
25           information that you don't want to share with

1 twenty-one other strangers out there. If that  
2 this is the case, do raise your hand, ask to  
3 approach the bench, and we will try to talk  
4 about it outside the presence of everyone else.

5 Witnesses. You should anticipate you  
6 are going to hear witnesses in this case. As  
7 jurors, you get to determine the credibility of  
8 every witness who testifies. You may decide to  
9 believe everything one citizen says and  
10 disregard everything another witness says. That  
11 is up to you. You may choose to believe part of  
12 what a witness says and disregard the rest of  
13 it. That is up to you. What is important is  
14 that you don't make a determination prior to the  
15 time of hearing the testimony of a witness that  
16 you are either going to believe or disbelieve  
17 everything a witness says simply because he is a  
18 member of a particular class or has a particular  
19 position or holds a certain kind of job. You  
20 don't, for example, say I am going to believe  
21 everything a priest might tell me and I am going  
22 to disregard everything a used car salesman  
23 might tell me. You wait and you listen to the  
24 testimony. A frequently asked question in  
25 criminal cases is would you believe the

1 testimony of a police officer simply because he  
2 is a police officer and for no other reason.  
3 You should anticipate, in murder cases  
4 particularly, that you will hear from police  
5 officers at some point. Perhaps after that  
6 witness or any other witness has testified, you  
7 may say to yourself: Well, based on this  
8 witness' background, his training, his  
9 expertise, what this witness was able to observe  
10 in the case on trial, I am going to believe him  
11 more in this case. Maybe not. That is up to  
12 you. But before you have ever heard a word of  
13 testimony, you don't say you are automatically  
14 going to believe a police officer because he  
15 wears a blue uniform or disregard someone else  
16 because he is a wrecker driver. Any questions?  
17 Anybody have any conflict with that?

18 I told you a little while ago about  
19 the indictment in a criminal case being no  
20 evidence of guilt whatsoever. I want to go over  
21 several general principles of law. Many of  
22 those you are familiar with, particularly those  
23 who have served on criminal juries in the past,  
24 and most of you, because you have seen far too  
25 much television in your lifetimes, and we have

1 to re-educate you, since you have seen too much  
2 L A Law and Petrochelli and Perry Mason and all  
3 the rest of them. But a defendant does have the  
4 presumption of innocence. As this defendant or  
5 any defendant in a criminal case sits in a  
6 courtroom, he is not a little bit guilty. He is  
7 presumed innocent. That is a legal  
8 presumption. It may be overcome by legally  
9 competent evidence. That is what the State  
10 attempts to do when they call witnesses to the  
11 stand. They are attempting to chip away at his  
12 presumption of innocence so that, in their  
13 opinion, at the time they rest, they are, in  
14 effect, saying: We, the State, think we have  
15 now proved this defendant's guilt beyond a  
16 reasonable doubt. We have met our burden of  
17 proof. And they rest. He is presumed  
18 innocent. It's a legal presumption. It can be  
19 overcome with legally competent evidence. The  
20 burden of proof in a criminal case is for the  
21 State to prove a defendant's guilt beyond a  
22 reasonable doubt. Not beyond all doubt,  
23 contrary to television, not beyond a shadow of a  
24 doubt but beyond a reasonable doubt. For most  
25 prospective jurors to have a case proven to

1           their satisfaction beyond all doubt, that juror  
2           would have had to have been present and observe  
3           the offense occur. If that were the case, you  
4           would be a witness and you could not sit as a  
5           juror in a case. We have those rare  
6           circumstances where video cameras are filming  
7           everything that occurs in a criminal offense.  
8           Bank robbery, the occasional convenient store  
9           robbery, that kind of thing. Those cases  
10          usually have evidence that is so overwhelming,  
11          with the tapes rolling, that they never get to  
12          trial. For some jurors, that is what they would  
13          need to find a defendant guilty beyond all doubt  
14          or beyond a shadow of a doubt. What we are left  
15          with are all those other cases where you have to  
16          hear witnesses come to court, take the witness  
17          stand under oath and tell you what they saw  
18          occur or what their investigation resulted in.  
19          You are getting information second and third  
20          hand. For that reason, the burden is to prove a  
21          defendant's guilt beyond a reasonable doubt.  
22          Reasonable doubt means different things to  
23          different people. There is not going to be a  
24          definition that I am going to tell you right  
25          now. Each side may get up and tell you a

1 definition of reasonable doubt because, after  
2 well over a hundred years, our Court of Criminal  
3 Appeals in the last few months has finally given  
4 us a definition of what beyond a reasonable  
5 doubt means. And if they want to read it to  
6 you, they certainly may; but it's a very  
7 individual kind of concept. What is reasonable  
8 doubt for juror number one would not be  
9 reasonable doubt for juror number five even  
10 though they both sat here and listened to the  
11 very same testimony. It's not a matter of  
12 numbers; it's not a matter of percentages; it's  
13 not a matter of who calls the most witnesses.  
14 It's up to you to make that determination.

15 As I said earlier, at some point the  
16 State will rest, and the defense has the burden  
17 or has the -- I slipped up there -- does not  
18 have any burden. The defense has the  
19 opportunity to go forward. The defense doesn't  
20 have to call witnesses. They do have to call  
21 the defendant, they do not have to call any  
22 witnesses at all, and the State can not call the  
23 defendant to the stand. Oftentimes in criminal  
24 cases you will see the defense rest right behind  
25 the State without ever having called any

1           witnesses at all. Keeping in mind, the State at  
2 the point where they are resting are, in effect,  
3 saying we think we have met our burden of proof,  
4 we have proven the defendant's guilt beyond a  
5 reasonable doubt, we rest, it's passed to the  
6 defense to go forward if they choose to do so.  
7 Oftentimes the defense rests, in effect, saying  
8 we don't believe the State has met their burden  
9 of proof. We don't believe they have proven his  
10 guilt beyond a reasonable doubt. And if you had  
11 to go back right now and decide this case, you  
12 would have to note not guilty. They might do  
13 that. They might call witnesses. I don't know  
14 in advance what is going to happen. There are  
15 subpoena lists on file, but they don't have to  
16 call everyone on the subpoena lists. Frequently  
17 in criminal cases the subpoena lists of the  
18 State and defense are identical. And the State  
19 gets first crack at the witnesses. They get to  
20 go first. So, if the defense were going to call  
21 someone for some particular object, I don't know  
22 why, but if they were going to call somebody to  
23 get some kind of fact before the jury, it may  
24 well be they can get that out in cross examining  
25 the witnesses called by the State and

1 effectively present whatever case they wanted to  
2 present and rest without ever having called  
3 anyone. The defense does not have to call that  
4 defendant to the stand. A defendant in a  
5 criminal case has the fifth amendment  
6 privilege. He does not have to take the stand  
7 and testify in his own behalf. Each of you as  
8 potential criminal defendants has that right. I  
9 know full well that many of you would say  
10 individually that if you were ever charged with  
11 a criminal offense you would want to get up  
12 there and tell everything you knew. Maybe you  
13 would and maybe you wouldn't. There are many  
14 legitimate reasons why people don't take the  
15 stand in their own behalf. Usually that  
16 decision is made in conference between the  
17 defendant and his counsel after the State has  
18 rested. Your counsel may well be telling you,  
19 properly, not to get on the stand and testify.  
20 You can't help yourself at this point, the State  
21 hasn't proven their case, we shouldn't do  
22 anything. Many people, prospective defendants  
23 in criminal cases in this courthouse have severe  
24 accents and don't want to take the stand. Many  
25 defendants appear for all the world like they

1       are telling a lie when in fact they are telling  
2       the truth simply because of the stress they are  
3       under when they are on the witness stand. So,  
4       there are many legitimate reasons why people  
5       don't take the stand in their own behalf, and  
6       you can't speculate on those reasons. I know  
7       it's natural curiosity to try to figure out why  
8       didn't so and so take the stand. You can't  
9       think like that; you can't speculate on things  
10      you haven't heard. You have to be able to base  
11      a verdict on what you have heard, on the  
12      evidence that is presented in the courtroom. If  
13      there is not enough evidence to establish a  
14      defendant's guilt beyond a reasonable doubt, you  
15      vote not guilty. If you do believe the  
16      defendant had been proven guilty beyond a  
17      reasonable doubt, you vote guilty. If a  
18      defendant does not take the stand and testify in  
19      his own behalf, I will give you an instruction  
20      in the Court's Charge to the effect that his  
21      failure to testify is not to be considered as  
22      any evidence of guilt whatsoever. Anybody have  
23      any problem with that? Any conflicts so far?

24                  Let's take a couple of hypotheticals  
25      and make sure you understand. Indictment is no

1 evidence. A defendant is presumed innocent.  
2 The State has the burden of proof. And failure  
3 to testify is no evidence of guilt whatsoever.  
4 Let's say we suddenly selected twelve members of  
5 the jury, the defendant was arraigned, entered a  
6 plea of not guilty after the indictment was  
7 read, and I immediately charged the jury and  
8 sent you to the back to deliberate the case.  
9 You would have to vote not guilty in that  
10 situation because he is presumed innocent, the  
11 indictment isn't any evidence, failure to  
12 testify isn't any evidence at all, and the State  
13 had the burden of proof and didn't go forward.  
14 You would have to be able to vote not guilty in  
15 that situation. You would be obligated to vote  
16 not guilty.

17 Anybody have any problem with that?

18 Let's take another hypothetical. The  
19 defendant is arraigned, a plea is entered, State  
20 goes forward by calling witnesses to the stand.  
21 At some point, the State rests. Defense rests  
22 right behind the State without ever having  
23 called any witnesses, including the defendant.  
24 Charge is read to you. You go back to  
25 deliberate. This case, you as an individual

1 juror believe that the defendant's guilt had  
2 been proven beyond a reasonable doubt. Whatever  
3 it took for you, the State had met their  
4 burden. In your mind, the State had proven his  
5 guilt beyond a reasonable doubt, but he didn't  
6 testify. You would have to vote guilty in that  
7 situation. Is there anybody who could not vote  
8 guilty even if you believed the State had proven  
9 a defendant's guilt beyond a reasonable doubt?  
10 Seems like a silly question, but occasionally we  
11 have members of a prospective jury panel who  
12 believe, for whatever reason, be it personal or  
13 philosophical or religious reasons, they simply  
14 could never participate in a verdict of guilty  
15 even if they believed the defendant guilty  
16 beyond a reasonable doubt. Is there anybody of  
17 that mind on this panel? I assume by your  
18 silence there is none.

19                   Third and last hypothetical. State  
20 goes forward, calls witnesses, State rests.  
21 Defense rests right behind the State. You go  
22 back to deliberate. In this scenario you as an  
23 individual juror believe the State had not  
24 proved the defendant's guilt beyond a reasonable  
25 doubt. Whatever it took for you individually,

1       the State hadn't done it. After deliberating  
2       with those other jurors, talking about the case,  
3       you believe the State had proven his guilt  
4       beyond a reasonable doubt, but he didn't  
5       testify. You would be obligated to vote not  
6       guilty. You cannot use failure to testify for  
7       any purpose. You can't give it any weight to  
8       get you over the hump, so to speak, from not  
9       guilty to guilty. Anybody have any problem or  
10      any conflict with that? All right. No  
11      questions at all so far? You're hardly even  
12      nodding. They are going to make you speak up  
13      when they start talking to you.

14           Lesser included offenses. There are  
15      certain other offenses than the primary charge  
16      which you may see when you go back to deliberate  
17      a case. That is to say you may hear evidence  
18      regarding another offense or be given an option  
19      to find a defendant guilty of a lesser offense  
20      than the primary charge.

21           Murder. If somebody knowingly or  
22      intentionally causes the death of another  
23      person, that is murder. That is a first degree  
24      felony offense of what we refer to as simple  
25      murder or straight murder. A lesser included

1 offense of that may be such things as voluntary  
2 manslaughter, a second degree felony,  
3 involuntary manslaughter, a third degree felony,  
4 a class A misdemeanor offense of negligent  
5 homicide perhaps. It just depends on the case  
6 and what the testimony shows and what kind of  
7 evidence has been admitted. I don't know in  
8 advance, like I said before, what I am going to  
9 hear in this case. If there is anything in the  
10 record about a possible lesser offense, I am  
11 obligated to put that in the Court's Charge.  
12 That is to give the jury an option of finding a  
13 defendant guilty of a lesser offense, if  
14 anything. A capital murder case is the ultimate  
15 offense in Texas. We have misdemeanor offenses,  
16 we have felony offenses, we have capital murder  
17 offenses. When I am saying a capital murder  
18 offense, I am talking about an offense for which  
19 on conviction there are only two possible  
20 punishments, either a life sentence or the death  
21 penalty. That is what a capital offense is, one  
22 which can only result in a life sentence or the  
23 death penalty, not a term of years. We know  
24 that lesser included offenses of capital murder  
25 can be murder, voluntary manslaughter,

1       involuntary manslaughter, on down the line like  
2       that. Those first, second, third degree  
3       felonies. They just stair step down from  
4       capital murder at the stop down through murder,  
5       a first degree felony, which is punishable by  
6       confinement for not less than five years nor  
7       more than 99 years or life, down to voluntary  
8       manslaughter, two to twenty years, involuntary  
9       manslaughter, two to ten years, misdemeanor  
10      offenses up to a year in county jail. They  
11      just stair step down and are lesser included  
12      offenses. If I give you a charge that has a  
13      lesser included offense in it, I am not making a  
14      determination that is what you should find a  
15      defendant guilty of, if anything. I am merely  
16      obligated to put it in the charge. So, you  
17      might see a charge which asks you whether or not  
18      you believe that the State has proven the  
19      defendant's guilt beyond a reasonable doubt and  
20      vote guilty or not guilty. You may see a  
21      charge that has in it something to the effect  
22      that if you do not believe beyond a reasonable  
23      doubt that a defendant is guilty of capital  
24      murder, you are next to consider a lesser  
25      charge, such as murder or voluntary manslaughter

1 or involuntary manslaughter. Those are options ..  
2 you may see later. I just don't want you to  
3 get hit blindsided by that for the first time  
4 when you hear about it later on in individual  
5 questioning.

6 Any questions so far?

7 All those other offenses have ranges  
8 of punishment, as I said, that include a term of  
9 years as a possibility. Capital murder does  
10 not. It's either life or death. We have very,  
11 very wide ranges of punishment for those other  
12 offense because there are so many different ways  
13 in which certain kinds of offenses can be  
14 committed. All first degree felony offenses  
15 have the same range or punishment, five to 99  
16 years or life. In addition, a fine not to  
17 exceed ten thousand dollars may be assessed.  
18 First degree felony offenses include everything  
19 from delivery of cocaine to burglary of a  
20 habitation, aggravated robbery. Straight or  
21 simple murder, is a first degree murder. The  
22 ranges are so wide because there are so many  
23 different ways that each one of those different  
24 kinds of offenses can be committed. When I say  
25 murder, most of you think of some kind of

1 preconceived type murder type situation. It  
2 may be a husband killing a wife, somebody who  
3 has had a quarrel with somebody and lies in wait  
4 and assassinates them. You usually think of  
5 the kinds of offenses which are, for want of a  
6 better term, more aggravated. It's usually more  
7 difficult for jurors to consider those  
8 hypothetical situations in which the lesser  
9 range of punishment might be appropriate in a  
10 proper case. We disagree over our  
11 hypotheticals. And if there is disagreement in  
12 hypotheticals, each side has the opportunity to  
13 present their own. But a possible murder  
14 hypothetical, one that you may have never  
15 considered before is one involving a euthanasia  
16 type case where someone--

17 MR. STAFFORD: May I have the record  
18 reflect my objection?

19 THE COURT: The record so reflects  
20 your objection.

21 Where, for example, we extend  
22 hypotheticals because we are trying to make a  
23 point. Let's say husband and wife have been  
24 married for sixty years. They love each other  
25 dearly. Wife is dying of some incurable

1 disease, some painful disease. She's on  
2 life-support equipment. The doctors have been  
3 in and said she only has twelve to twenty-four  
4 hours to live. She's in extreme pain; but  
5 because of the nature of her life-support  
6 equipment, she can't receive any medication to  
7 relieve her pain. Doctors leave the room, she  
8 pleads with the husband to, in effect, pull the  
9 plug. He does so. He has committed an act  
10 clearly dangerous to human life, some would  
11 argue, resulting in her death. Even though she  
12 would have been dead hours later perhaps, he has  
13 caused her death. That could be charged as a  
14 murder case, a person could be indicted for,  
15 could be tried for that offense, could perhaps  
16 be convicted of the offense of murder, and if  
17 convicted, a jury would determine the  
18 appropriate punishment, that perhaps, remember I  
19 am extending this hypothetical, is the kind of  
20 case where a jury might be able to consider the  
21 lesser range of punishment. It's usually easy  
22 for jurors to think of a situation which is more  
23 aggravating. I am just saying that to  
24 illustrate to you that we have to have these  
25 very, very wide ranges of punishment. We can't

1 commit you to what you would do in a certain  
2 fact situation. We want you to be able to keep  
3 open minds when you come in here and be able to  
4 consider the entire range of punishment after  
5 you have heard what the circumstances were.

6 Anybody who thinks you could not do that?

7 Let's go back to the offense of  
8 capital murder. When a jury finds a defendant  
9 guilty of the offense of capital murder, we  
10 don't ask the jury to go back and vote either  
11 life or death; instead, we ask them to answer  
12 certain questions. Now, while I said earlier  
13 that a capital murder offense is a murder plus  
14 some other aggravating factor, I think we  
15 probably need to go through under the Texas  
16 statutes what those all include because some of  
17 you are very confused about those and don't  
18 consider that certain offenses are capital murder  
19 offenses. Our statutes set out six different  
20 ways in which the offense of capital murder can  
21 be committed. One is where a fireman or a  
22 police officer is murdered in the lawful  
23 discharge of an official duty. You probably  
24 have seen those on television, read them in the  
25 newspaper. That is a capital murder offense.

1 Murder plus the aggravating factor of the victim  
2 being a fireman or police officer in the lawful  
3 discharge of an official duty. One is the case  
4 where somebody commits a murder for remuneration  
5 or the promise of remuneration. Murder for hire  
6 schemes. You probably read about those. There  
7 was a famous one in the courts recently in this  
8 county. One is the situation where someone is  
9 incarcerated in a penitentiary and murders an  
10 employee of that penal institution. That is  
11 capital murder. One is where someone is  
12 escaping or attempting to escape from a penal  
13 institution and commits a murder. That is  
14 capital murder. The category that most of you  
15 are familiar with, the ones that you see on  
16 television and read about in the papers  
17 sometimes on a daily basis is where someone is  
18 in the course of committing another felony or  
19 attempting to commit another felony and commits  
20 a murder. The other felony being robbery,  
21 burglary, kidnapping, aggravated sexual assault  
22 or arson. If somebody is in the course of  
23 committing one of those offenses or attempting  
24 to commit one of those offenses and murders  
25 someone, that is a capital murder offense,

1 punishable on conviction only by life or  
2 death. Such as the example where a woman is  
3 kidnapped from a parking lot, taken somewhere,  
4 raped and murdered. That is a capital murder  
5 situation. A convenient store clerk in the  
6 course of committing a robbery, he is murdered,  
7 that is the robbery plus the murder, that is a  
8 capital murder situation. The sixth and final  
9 category we have of capital murder is where  
10 someone murders more than one person in the same  
11 criminal transaction. It can be a number of  
12 people. It can be as few as two people. The  
13 Jeffrey Dahmer situation in Wisconsin could be a  
14 capital murder situation. We know from my  
15 having read this indictment to you that the  
16 allegation in this case is that two people were  
17 murdered in the same criminal transaction. That  
18 is what gets it to capital murder status. You  
19 have those six different ways, everything from  
20 murder of a police officer in the course of the  
21 lawful discharge of an official duty to murder  
22 in the commission of another felony to murder of  
23 two or more people in the same criminal  
24 transaction and all those other things.

25 Many of you did not know that all of

1 those cases were capital murder offenses. I  
2 know you have to answer certain questions in  
3 this long form questionnaire before we tell you  
4 about that kind of thing.

5 Now, what happens if a jury returns a  
6 verdict of guilty of capital murder. There is  
7 a second stage of trial, just as there would be  
8 a second stage of trial if you found the  
9 defendant guilty of any other offense. Again,  
10 that is where you might hear evidence of  
11 background, reputation, prior bad acts, previous  
12 criminal convictions, if any, that kind of  
13 thing. The information you think would be  
14 helpful in deciding in another case what the  
15 range of punishment should be but in a capital  
16 murder case how you answer certain special  
17 issues. Both the jury and I are insulated a bit  
18 in a capital murder case because you do not go  
19 back and vote for life or death on conviction of  
20 capital murder; instead, you answer certain  
21 special issues. And I will tell you in advance  
22 exactly what I am going to do, whether I assess  
23 life imprisonment or the death penalty as  
24 required by law, depending on how you answer  
25 those questions.

1           The first question I would give you is  
2 over here on this board, and we will let you see  
3 it at a later time. The question is: Do you  
4 find from the evidence beyond a reasonable doubt  
5 that there is a probability that the defendant  
6 would commit criminal acts of violence that  
7 would constitute a continuing threat to  
8 society. Now, keeping in mind you have already  
9 heard the evidence in the case in chief. You  
10 have already found somebody guilty of capital  
11 murder and you have heard additional evidence  
12 perhaps in the second stage of trial, and now  
13 you are asked to answer this special issue, this  
14 question. This is the question where we are  
15 asking the jury to make a determination of a  
16 defendant's future dangerousness. I would give  
17 the jury an additional instruction that you are  
18 to consider all the evidence admitted at the  
19 guilt or innocence stage, all the evidence at  
20 the punishment stage, including evidence of a  
21 defendant's background or character or  
22 circumstances of the offense that militate for  
23 or mitigate against the imposition of the death  
24 penalty. So you have everything, both stages  
25 of trial when you go back and decide this issue

1       of future dangerousness.

2                     The word probability is in there. In  
3 common usage, we would say that probability  
4 means more likely to occur than not.

5                     The last word in that question is  
6 society. Criminal acts of violence that would  
7 constitute a continuing threat to society.

8                     Society is a term that goes undefined. I don't  
9 give a definition in the Court's Charge.

10                  Society does include the society within the  
11 penal system. The penitentiary system is part  
12 of society, what we used to call TDC, what we  
13 now call the Institutional Division of the Texas  
14 Department of Criminal Justice. So, do you find  
15 beyond a reasonable doubt that there is a  
16 probability that the defendant would commit  
17 criminal acts of violence that would constitute  
18 a continuing threat to society. You answer yes  
19 or no. It takes all twelve jurors agreeing, a  
20 unanimous verdict to answer that question yes.  
21 Ten or more have to agree to return a no  
22 answer. If you answer no on number one, there  
23 is no such probability beyond a reasonable  
24 doubt, I take the case back, I assess life  
25 imprisonment, your job is ended. If you answer

1       that question unanimously yes, there is such a  
2       probability that the defendant would commit  
3       criminal acts of violence constituting a  
4       continuing threat to society, then you proceed  
5       to the second special issue. Sometimes when you  
6       are answering number one you do get other  
7       evidence of a defendant's background, character,  
8       prior bad acts, that kind of thing. Sometimes  
9       that information is not made available to you.  
10      Sometimes you have to answer that question based  
11      solely on what you have heard in the case in  
12      chief. We would say that there are those cases,  
13      those capital murder offenses where the  
14      circumstances surrounding the commission of the  
15      offense are so horrendous that based on the  
16      commission of that offense alone a juror could  
17      in the proper case find that there would be a  
18      probability that defendant would commit criminal  
19      acts of violence constituting a continuing  
20      threat to society. You make up your own kind of  
21      hypothetical. This being the fifth week, I  
22      won't give you a hypothetical. If these parties  
23      want to do so, they may.

24                   Is there anybody here who can not see  
25                   how under some circumstances that question as to

1 probability could be answered yes and sometimes  
2 be answered no, depending on the evidence you  
3 had before you?

4 Proceeding to number two. And you  
5 only get to number two if you have answered  
6 number one yes there is such a probability. The  
7 number two question is asking whether, taking  
8 into consideration all the evidence, including  
9 the circumstances of the offense, the  
10 defendant's character and background and the  
11 personal moral culpability of a defendant, there  
12 is a sufficient mitigating circumstance or  
13 circumstances that warrant that a sentence of  
14 life imprisonment rather than a death penalty be  
15 imposed. I would instruct you that mitigating  
16 evidence is evidence you might regard as  
17 reducing a defendant's moral blameworthiness.  
18 Our statutes don't help us out a whole lot  
19 here. They don't tell us exactly what is  
20 mitigating and what isn't. The statutes don't  
21 define or limit the aspects of a defendant's  
22 character or background or record or the  
23 circumstances of the offense that are  
24 mitigating. And the law doesn't impose any kind  
25 of formula for determining how much weight to

1 give a mitigating circumstance. This is a  
2 rather new wrinkle in our capital murder law.  
3 Each side has the opportunity at the punishment  
4 stage to call witnesses. Each side has the  
5 opportunity to present other kinds of evidence.  
6 You cannot require one side or the other to  
7 present certain kinds of evidence. You might  
8 anticipate that a certain type of mitigating  
9 evidence might come from one side as opposed to  
10 the other but you can't require it. Sometimes  
11 jurors hear what they feel is mitigating from  
12 the State's case. They may hear evidence of a  
13 defendant's age perhaps, that that particular  
14 juror would think would be mitigating in the  
15 case on trial. Frequently mitigating evidence  
16 comes in the form of witnesses called by the  
17 defense. For example, you might hear evidence  
18 of a very bad kind of background that a  
19 defendant had lived through, and you might think  
20 that is mitigating in the case you have before  
21 you. I can't tell you exactly what is  
22 mitigating and what isn't. I can't tell you if  
23 the list of mitigating circumstances is twenty  
24 items long or if it's twenty thousand items  
25 long. That is up to you to decide. You may

1 hear this evidence and you may say it's  
2 mitigating, or you might say to yourself: This  
3 could be mitigating in another case but not in  
4 this case. Even if you do decide it's  
5 mitigating, you decide how much weight to give  
6 it. One juror might give it very little  
7 weight, another might rely on it a great deal in  
8 answering special issue number two. There is no  
9 burden of proof in special issue number two.  
10 You are simply asked to go back there and look  
11 at everything you have before you and decide if  
12 there is some kind of mitigation why the death  
13 penalty should not be imposed. While I can't  
14 tell you exactly what is and is not mitigating,  
15 I can tell you that mitigating evidence does  
16 include such things as mental retardation and  
17 mental illness. In the proper case, it can  
18 include such things as a defendant's good  
19 behavior in prison or in jail while he is  
20 awaiting trial. It can include an exceptionally  
21 unhappy or unstable childhood, drug use or  
22 economic deprivation, youth, a defendant's age,  
23 voluntary intoxication, drug dependency,  
24 illiteracy, opinion testimony of lay witnesses  
25 or psychiatric opinion testimony that a

1 defendant would not be a danger in the future.  
2 All those things in a proper case could be  
3 mitigating evidence. But you listen to it and  
4 you make a determination as to mitigation and  
5 you determine the weight to give it when you're  
6 answering this question. Here it takes all  
7 twelve people to agree on a no answer. It takes  
8 ten or more to agree to a yes answer. If that  
9 question is answered yes, again I assess life  
10 imprisonment. A death penalty only results if  
11 the unanimous answer to number one regarding  
12 probability is yes and the unanimous answer on  
13 number two is no. A yes, no, I assess the death  
14 penalty. We are each insulated a little bit  
15 from voting for life or death, but you get to  
16 know exactly what I am going to do depending on  
17 how you answer those two questions.

18 Any questions so far?

19 We want to make it clear that there  
20 are no automatic yes, no answers on these  
21 questions. Each one is going to vary, depending  
22 on what you have before you, the circumstances  
23 of the offense, the kind of evidence that has  
24 been admitted and that you have to deliberate on.

25 Any questions at all so far? You are

1 very confused.

2 THE COURT: Ms. Davies.

3 VOIR DIRE EXAMINATION BY THE STATE  
4 BY MS. DAVIES:

5 Let me introduce myself again. My  
6 name is Carol Davies. This courtroom is really  
7 uncomfortable with the post and the setup. We  
8 think we all have a hard time getting situated  
9 and having a comfortable place to work, so you  
10 will have to bear with us a little bit.

11 My name is Carol Davies. I am an  
12 assistant district attorney. You probably all  
13 know by name your elected district attorney,  
14 Johnny Holmes. I am sure you understand there  
15 is no way Mr. Holmes can be in all the criminal  
16 courts in this county handling the hundreds,  
17 thousands of criminal cases that are pending.  
18 There are close to two hundred attorneys who are  
19 his assistants. I am one of them. And we are  
20 each assigned to different courts handling  
21 different types of cases, depending on our  
22 experience and whatever. That is why I am  
23 here. You have heard the judge use the term the  
24 State. The State does this, the State has the  
25 burden of proof. A lot of references to the

1 State. He is talking about me. I am here  
2 representing the State. I am here to see that  
3 the laws of the state are enforced, hopefully  
4 that justice is done, and that appropriate  
5 punishments are given out in the case that is on  
6 trial. So, that is who they are talking about.  
7 I always like to mention that because I think  
8 it's easy to recognize the court reporter, the  
9 judge and the bailiff. I mean, their roles are  
10 pretty well defined. But a lot of time people  
11 scratch their heads over that. So, you know my  
12 job. And the twelve of you who are chosen to be  
13 on this jury have the job of deciding what is  
14 the truth, what really happened. You will  
15 decide the facts in the case while the judge  
16 decides the law, makes the legal decisions.

17 This is kind of an orientation  
18 session. When we are talking about a capital  
19 murder case, we have the opportunity to talk to  
20 each one of you individually. But, hopefully,  
21 we are going to save time over the long run here  
22 by having this opportunity to talk to you  
23 individually. I am going to use this time to  
24 talk about some of the concepts that come up in  
25 just about any criminal case, not just capital

1       murder. I am going to wait and talk about those  
2       things that are unique to capital murder cases,  
3       at least in the most part those things are  
4       unique to capital murder cases, for example, the  
5       two issues at the punishment stage. I am going  
6       to wait and talk to you about those things when  
7       we meet and talk individually, but for now we  
8       want to just go over some of the standard things  
9       that come up. I noticed there are a few of you  
10      who have been on juries before but most of you  
11      haven't, so for those of you who have had jury  
12      service, kind of bear with us because the ones  
13      who come in here and have never had that  
14      experience I think usually can appreciate this.  
15      There are things that they are not familiar with  
16      in everyday life. And capital murder is one of  
17      them.

18                  How many of you came in here today  
19      thinking that the death penalty was a  
20      possibility in any murder case? Anybody under  
21      that impression? No. Usually several people  
22      raise their hand.

23                  THE PROSPECTIVE JUROR: State the  
24      question again.

25                  MS. DAVIES: Think that the death

1           penalty was a possibility in any murder case?

2           THE PROSPECTIVE JUROR: Sure.

3           MS. DAVIES: But it is not. That is a  
4           very common misconception because people think  
5           it's kind of an eye for an eye notion, that the  
6           death penalty is a possibility in any murder.  
7           It has to be capital murder. That it's a unique  
8           kind of murder. And that is why it's important  
9           that we explain all these things to you so that  
10          everybody understands what we are dealing with  
11          as we get into it.

12          There are many varieties of murder or  
13          homicide under our state law. The judge has  
14          touched on them, and I want to go over them  
15          again. We will start at the top of the ladder.  
16          The most serious, the top rung of the homicide  
17          scheme is capital murder. Capital murder is the  
18          only offense where the death penalty is a  
19          possibility. There are only two possible  
20          punishments, life or death. That capital  
21          murder offense is an intentional murder plus  
22          something more, the aggravating factor. That  
23          aggravating factor that elevates an intentional  
24          murder to capital murder can be something like  
25          it's the murder during the course of a robbery,

1       murder during the course of a rape, murder of a  
2       police officer in the lawful discharge of his  
3       duty, the murder of more than one person in the  
4       same criminal transaction. So, just -- I may  
5       sound like I am minimizing murder, but just  
6       plain murder, just intentional murder is not  
7       enough. It has to be murder plus the  
8       aggravating factor.

9                  Below that, if we come on down the  
10       ladder, looking at all the different -- we refer  
11       to them as lesser included offenses because the  
12       lesser offenses are all a part of the greater  
13       offense, the greatest one is capital murder.  
14       It's kind of like taking off the layers of an  
15       onion or, you know, those dolls that kids play  
16       with that nest inside, they get bigger and  
17       bigger, so the little one, the lesser offense is  
18       always a part of the other. You just keep  
19       adding other factors to make it more serious to  
20       get to the greater offense. So, start at the  
21       top and come down. Capital murder is at the  
22       very top. Below that is your first degree  
23       murder, first degree felony punishable by five  
24       to 99 years or life. And by the way, all these  
25       lesser ones also have a possible optional fine

1 attached. I am going to mention that once and  
2 leave it off because I think it's the number of  
3 years that is the more significant part of the  
4 punishment. First degree murder, five to 99  
5 years or life. That is the intentional or  
6 knowing taking of someone's life. No  
7 aggravating factor; otherwise, it would be  
8 capital murder. And, I mean, it could be as  
9 brutal as you want it to be, but it still is  
10 just the intentional or knowing taking of  
11 somebody's life. That could be anything. Most  
12 people come in with the idea, I mean, you have  
13 some notion of what is murder. That intentional  
14 murder could be a sniper who sits up on the roof  
15 of a building and picks off, just shoots a  
16 stranger on the street. It could be a domestic  
17 quarrel, something that has been festering and  
18 growing for years where somebody just finally  
19 loses it and shoots a spouse. It could be a  
20 barroom fight. It could be the mercy killing or  
21 euthanasia example that the judge has given  
22 you. And I give all those examples to point out  
23 it could be anything from a somewhat sympathetic  
24 sad situation to a brutal killing of a  
25 stranger. All intentional or knowing murder.

1 All first degree felonies. If you come on down  
2 the hierarchy down to the next lower rung on the  
3 ladder, that is voluntary manslaughter, second  
4 degree felony. Second degree felony is  
5 punishable by two to twenty years. Voluntary  
6 manslaughter is, again, an intentional or  
7 knowing killing, intentionally taking someone's  
8 life; however, it is done under certain unique  
9 circumstances. The legislature has seen fit to  
10 downgrade an intentional or knowing killing when  
11 it is committed under the influence of sudden  
12 passion from an adequate cause. And then it  
13 gives -- the legislature has given us a  
14 definition which would explain that when one is  
15 acting under the influence of the kind of  
16 emotion, rage or passion they don't have time to  
17 reflect. In other words, they act very quickly  
18 and under the influence of this rage, and the  
19 rage was induced by the deceased under  
20 circumstances that a reasonable person would  
21 accept as reasonable. That is to paraphrase in  
22 laymen's terms. Let me give you an example to  
23 try to illustrate that. This would be an  
24 example of why an intentional or knowing murder,  
25 first degree murder would be downgraded in this

1 kind of situation. You come home from work.  
2 Your twelve-year-old daughter was home alone.  
3 You get home from work. There she is. She's  
4 beaten, she's cut up, she is bleeding, she's  
5 sobbing, she has been raped. Mr. Jones, who  
6 lives down on the corner, forced his way into  
7 the house and, you know, raped her, slashed her  
8 up. You as a parent are enraged. Instead of  
9 reaching for the phone to call the police, grab  
10 a gun, go down to the corner, blow him away.  
11 You kill him. Intentional murder. The law  
12 says, yes, it's intentional murder, but if a  
13 jury believes that a reasonable person may very  
14 well be so enraged they would act this way they  
15 can say this is voluntary manslaughter, and it  
16 would not be one punished as seriously. So that  
17 is an extreme example. With all of these  
18 examples, you are going to find out we use  
19 extreme examples because it kind of helps to  
20 illustrate the point a little bit.

21 The next lower or lesser homicide  
22 offense would be involuntary manslaughter.  
23 That is a third degree felony, punishable by two  
24 to ten years. That is the reckless taking of  
25 someone's life. Reckless means you should have

1 known that your conduct was going to present a  
2 serious threat to someone's life -- pardon me --  
3 you did know. You did know that your conduct  
4 was a serious threat, but you disregarded that  
5 and acted anyway, and the result was that  
6 somebody died. Common example of involuntary  
7 manslaughter, your third degree homicide, would  
8 be the situation that you read about in the  
9 newspaper every day where someone is driving  
10 while intoxicated, they hit a car, somebody is  
11 killed. They knew there was a risk, get behind  
12 the wheel drunk, disregarded the risk, result of  
13 their conduct is somebody's death. Involuntary  
14 manslaughter. And then at the very bottom rung  
15 of the homicide ladder, the last lesser, is  
16 negligent homicide. That isn't even a felony  
17 offense. Misdemeanor offense punishable,  
18 maximum, a year in the county jail. That is  
19 where one negligently causes death where they  
20 should have known that their conduct was going  
21 to endanger someone but didn't know. Still  
22 resulted in somebody's death.

23 Now, the reason we want to be sure  
24 that you understand all of those -- and for now  
25 let's just disregard capital murder. Let's just

1 talk about all of those lessers. Ranging all  
2 the way at the top, the intentional, five to  
3 life range, down to involuntary, two to ten.  
4 All the felonies.

5 In any instance where we are in trial  
6 on a greater offense, there is the possibility  
7 that a jury would get an instruction from the  
8 judge that permits them to consider finding one  
9 guilty of the lesser offense. And in an  
10 instance like that, if you were on the jury, we  
11 would need to know whether you could consider  
12 the entire range of punishment. Remember now  
13 we are not talking about death penalty. We are  
14 not talking about a capital murder. We are just  
15 talking about the term of years that would be  
16 included in any of those lesser offenses, two to  
17 ten, two to twenty, five to life, depending on  
18 which category of homicide we would be talking  
19 about.

20 Is there anyone here who could never  
21 consider sentencing someone to life in the  
22 penitentiary? No matter what the crime is, they  
23 just felt like, no, I couldn't do that, no  
24 matter what the facts. Anyone feel that way?  
25 Are you awake out there? Usually there is

1 somebody who does feel that way. By the way,  
2 you know, nod your head; raise your hand, stomp  
3 your feet, whatever it takes to let me know how  
4 you feel about some of these things. I just  
5 need to know if you could if you thought it was  
6 a proper case sentence someone to life in the  
7 penitentiary for homicide, first degree  
8 homicide. Okay.

9 The other end of the range, the judge  
10 focused on this more, is the minimum, as little  
11 as -- let's talk about intentional -- as little  
12 as five years or, if you were talking about the  
13 second or third degree, as little as two  
14 years. There is a very wide range of fact  
15 situations, which I think you all realize now.  
16 And that is why there is such a wide range of  
17 punishment. So our concern is to know and be  
18 sure that each of you is the kind of person who  
19 would keep an open mind, wait, hear the facts of  
20 the case and then be able to decide what was  
21 appropriate, given the facts that you heard in  
22 evidence. Can each of you do that? In other  
23 words, consider the minimum as well as the  
24 maximum and anything in between if you sat on a  
25 jury for either a first, second or third degree

1 homicide. You can do that? Okay.

2 You know that this is the intentional  
3 taking -- this particular case, the indictment  
4 is for the intentional taking of two lives, both  
5 Brad and Charles Allen. That is what makes it  
6 capital murder is two people. When we are  
7 talking about capital murder, I have to prove  
8 that it was an intentional killing. Doesn't say  
9 anything about premeditated.

10 Anybody feel like it would have to be  
11 a premeditated crime for it to be an offense  
12 that should be a capital murder? I know you  
13 have all heard that term. It's mainly on TV.

14 What does it take to act  
15 intentionally? I am going to suggest to you  
16 that a person can form the intent to kill just  
17 as quickly as they can form the intent to do  
18 anything else. And I guess the other thing I  
19 want us to think about is how one proves the  
20 intent. You know, the judge has already  
21 reminded each of you that this defendant, every  
22 defendant has the right to remain silent. He  
23 doesn't have to testify. I can't make him  
24 testify. If he did testify, he may or may not  
25 tell the truth. He has a lot at stake. Under

1 those circumstances, I have got to come into  
2 court in this case, like I do in every case, and  
3 prove intent based on the circumstances. You  
4 look at his conduct. You look at what he did to  
5 determine what he intended to do. Do you feel  
6 like you can do that? Is there anybody who  
7 thinks they couldn't, that they couldn't decide  
8 what somebody intended to do by looking at their  
9 conduct in the circumstances? Anybody  
10 troubled? For example, I think sometimes that  
11 is kind of a vague notion. If I am standing  
12 here with my cup and it falls to the ground as  
13 I'm standing here now, you might not be entirely  
14 sure whether I intended to drop the cup or it  
15 just slipped out of my hand. On the other hand,  
16 if I brought my hand back and slammed it  
17 against, hurled it across the room and hit the  
18 wall with it, based on my conduct, you might be  
19 able to conclude she intended to drop the cup.  
20 Or say it slipped out of my hand, hit the floor,  
21 you are not too sure. I picked it up and  
22 slammed it down again. Do you think you can  
23 look at the circumstances and decide what the  
24 intent was? Anybody who thinks that is not  
25 possible or that you could not do it?

1                   As far as being able to decide how  
2 long it takes, because when we are talking about  
3 murder, as I say, it doesn't have to be  
4 premeditated. It could be a barroom fight could  
5 erupt suddenly. Two people didn't plan ahead.  
6 Or any of us who drive the freeways these days  
7 and you read the newspapers, there could be a  
8 situation where you cut somebody off, cut in  
9 front of them on the freeway, makes them mad,  
10 they reach under the seat of the car, pull out a  
11 gun, take aim, shoot, kill. Intended to do it,  
12 but certainly it was something that was done  
13 very spontaneously, they didn't take long to  
14 think it through. It was just you cut them off,  
15 they get mad, reach for the gun and shoot. I  
16 am suggesting that that is an intentional  
17 murder.

18                   MR. STAFFORD: I object, Your Honor. I  
19 suggest that is involuntary manslaughter. He  
20 acts out of passion. Could be.

21                   THE COURT: Rephrase it, please.

22                   MS. DAVIES: Well, actually, Mr.  
23 Stafford, I think that is an interesting  
24 notion.

25                   And actually it would be for a jury to

1 decide under those circumstances whether it  
2 would be reasonable for a person to get so angry  
3 to react in such a way in response to being cut  
4 off on the freeway. But let's assume that a  
5 jury rejected that notion and they didn't think  
6 that was a reasonable response in the  
7 circumstances. Focusing on the intent because  
8 even if you were a jury of people who thought it  
9 was reasonable to get so angry as to kill, it  
10 still is an intentional murder. That is a part  
11 of the voluntary manslaughter scheme. So  
12 focusing on whether it's intentional or not. Is  
13 there anybody who disagrees with the notion that  
14 you could form the intent to kill that quickly?  
15 Okay.

16 Kinds of evidence. We have done this  
17 so many times I can't remember whether I heard  
18 the judge say this today, frankly, or whether he  
19 said it another day.

20 THE COURT: He didn't. I know what  
21 you are going to say.

22 MS. DAVIES: About witnesses and  
23 evidence. I apologize. It begins to all run  
24 together. Types of evidence. I think a lot of  
25 time people think of evidence as bullets and

1       guns and fingerprints and things you can touch  
2       and feel. Witnesses who come in to testify,  
3       the words, their testimony, that is evidence.  
4       And as simple and obvious as that seems, I like  
5       to mention it because I think people sometimes  
6       don't realize that. That is evidence. It's the  
7       most typical, the most common kind of evidence  
8       you have. Citizens like you and me who come in  
9       and under oath tell you what they saw or heard  
10      or know about a case. And that is the jury's  
11      job, to decide what is believable. If during  
12      lunch, when you were out, if there had been an  
13      automobile accident out on the corner and there  
14      had been a witness, four witnesses, one on each  
15      of the four corners viewing that accident, and  
16      they came up here immediately after lunch and  
17      told you about what they saw, would it surprise  
18      anybody to think there may be some discrepancies  
19      or differences in the way they reported what  
20      they saw? Anybody expect everybody to have  
21      exactly the same version of what happened?

22                   THE PROSPECTIVE JUROR: No.

23                   MS. DAVIES: Why?

24                   THE PROSPECTIVE JUROR: Four different  
25                   corners.

1                   MS. DAVIES: Right. Different  
2 perspectives. They are seeing it from different  
3 angles. Maybe one of them blinked at the wrong  
4 moment, turned aside, maybe one had better  
5 eyesight than the other. What? Maybe one is  
6 more articulate than another. One is better  
7 able to come in and describe what they saw or  
8 has a better memory. And these are all the  
9 kinds of things that a jury can take into  
10 account when they are deciding which of the  
11 witnesses is the most believable. What if one  
12 of those witnesses happened to be the brother  
13 or the father of the driver of one of the cars  
14 in the accident? May be more inclined to favor  
15 one version or another or if it would help  
16 someone they are related to. Those are the kind  
17 of things that a jury could consider in deciding  
18 which of those people to believe.

19                   So you are in the business, if you are  
20 on the jury, of resolving the conflicts,  
21 deciding what fit with the other evidence. You  
22 know, one of them might have told you it was a  
23 maroon car and you looked at the pictures of the  
24 accident, you say there is not a maroon car  
25 here. There is a brown car or there is a red

1 car. I mean, partly it's visual perception and  
2 the names that people use. But if there is a  
3 blue car and a red car and somebody is talking  
4 about maroon car, you might be able to fit that  
5 together. Do you see what I mean by resolving  
6 conflicts? Anybody who feels like they  
7 couldn't resolve conflicts in testimony, though,  
8 that they couldn't make that kind of decision?  
9 Anyone at all? Because it is very difficult for  
10 some people to do that, and we don't want to put  
11 you in that position if you feel like you  
12 couldn't do that.

13 Sometimes we don't have a problem with  
14 conflicts because there is only one witness.  
15 The law says that we can get a conviction based  
16 on the testimony of just one witness. Now,  
17 obviously, a jury of twelve people is going to  
18 have to be convinced beyond a reasonable doubt  
19 that they believe that witness and that that  
20 witness' testimony is enough to prove up the  
21 case. We are talking about capital murder here,  
22 though. Is there anyone who feels like they  
23 simply could not ever convict based on the  
24 testimony of just one witness? Assuming, of  
25 course, that you believe that witness beyond a

1 reasonable doubt. Anyone who feels that way?  
2 No? Either you are sleeping or -- I mean, I  
3 have never had a group that nobody answered to  
4 this. Think about that a minute. I am going to  
5 be asking you to find somebody guilty of capital  
6 murder and I am going to be asking for the death  
7 penalty and I am telling you that that could be  
8 done based on the testimony of just one witness  
9 if you believe that witness. Anyone who thinks  
10 that just isn't right, you couldn't do that?  
11 Okay.

12 Did I see you shaking your head back  
13 there? Is it Ms. Wright?

14 THE PROSPECTIVE JUROR: Yes.

15 MS. DAVIES: Do you feel like that  
16 would be okay?

17 THE PROSPECTIVE JUROR: If I was  
18 convinced that they were really telling the  
19 truth.

20 MS. DAVIES: Absolutely. That is a  
21 part of it. Any witness you hear, you can  
22 believe all, none or part because sometimes,  
23 it's just like we were talking about where there  
24 are four witnesses, one of the witnesses may  
25 have blinked and they may be mistaken about one

1       thing they tell you about, but 90 percent of  
2       what they are telling you may be absolutely  
3       true. You would have to put it together.

4                     Kinds of witnesses. The judge  
5       touched on this when he talked about -- what did  
6       he say? Police officers. Status basically is  
7       what we are talking about. Status, the uniform,  
8       a title. Do you feel like you are going to  
9       automatically believe or automatically  
10      disbelieve a police officer? Anyone who feels  
11      that way? Never going to believe a police  
12      officer or always? Or never believe a doctor,  
13      always believe a doctor. Anyone feel that way?  
14      The idea is wait and hear what they have to say  
15      before you decide, you know. You can always  
16      consider a person's special training and  
17      expertise if it has something to do with what  
18      they are testifying about, and you know, that  
19      may or may not be beneficial.

20                   Believing all or part applies, all or  
21      part of a witness' testimony, applies in another  
22      area, too. In some instances, even though the  
23      defendant has the right to remain silent and may  
24      not testify, in some instances you would hear  
25      evidence in the form of a statement that a

1 defendant gave to the police. Do you feel like  
2 if a defendant spoke to the police and gave a  
3 written statement that he is always going to be  
4 totally honest with the police? Do you think  
5 there is a chance some of it may be self-serving  
6 if he talks to the police? Any reaction there?

7 THE PROSPECTIVE JUROR: I would have  
8 to hear the statement.

9 MS. DAVIES: The point to that is, I  
10 mean you can believe all or part or none of a  
11 statement, just like you could of any witness.  
12 Does that seem appropriate?

13 There is a rule of evidence if I offer  
14 a defendant's statement into evidence I can  
15 delete certain portions if I choose to do so for  
16 whatever strategy. It can relate to this notion  
17 of the ability to believe all or part of  
18 anything. So if I offered a statement and I  
19 deleted certain parts of it, you would know it.  
20 It's not like there would be portions excised  
21 and you would never know. It would be made  
22 clear -- I am offering this statement with the  
23 exception of the last paragraph. Anybody's  
24 first reaction is that they are highly offended  
25 at that notion? They would think that was wrong

1 for me to do that. Ms. Polk.

2 THE PROSPECTIVE JUROR: Yes.

3 MS. DAVIES: Ms. Polk is being real  
4 honest. There are usually a number of people.  
5 What is your feeling there?

6 THE PROSPECTIVE JUROR: Something  
7 could be taken out of context from the entire  
8 statement that was given.

9 MS. DAVIES: Well, and you would know  
10 that. It's not like it would be done -- I would  
11 be telling you, or the witness would make clear  
12 certain things have been left out here. You  
13 would know that. And that would bother you?

14 THE PROSPECTIVE JUROR: You would know  
15 what was left out also?

16 MS. DAVIES: Well, we will get to  
17 that. One step at a time. Yes, the answer is  
18 yes. But the idea that I might offer a  
19 statement but leave out certain words or  
20 sentences, would that offend anybody?

21 THE PROSPECTIVE JUROR: Sure.

22 MS. DAVIES: Well, would it make a  
23 difference -- you are Mr. Ketchie?

24 THE PROSPECTIVE JUROR: Yes.

25 MS. DAVIES: The other part of the

1 rule that would permit me to do that also makes  
2 very clear that if I do leave out part, and the  
3 jury would know it, the defense immediately has  
4 the right to offer what I left out. So it's  
5 like, okay, this has to be fair, folks, rule.  
6 Yeah, you don't have to offer it all. It's for  
7 trial strategy, whatever strategy that I may  
8 have in presenting my case that I don't want to  
9 be the one who offers this particular bit of  
10 evidence. The judge, both sides, the jury all  
11 know that the defense, if they want the jury to  
12 hear it and they think it would benefit their  
13 case, they immediately can offer that, too. So  
14 nothing is taken, you know, meaning it can't be  
15 distorted or whatever. Does that make a  
16 difference to you? What about you?

17 THE PROSPECTIVE JUROR: Yes, as long  
18 as you have some chance, either side has a  
19 chance to do it.

20 MS. DAVIES: Oh, absolutely. I want  
21 you to understand how the rule works. In other  
22 words, if I did that, would you hold it against  
23 me or be angry with me if I did it?

24 THE PROSPECTIVE JUROR: No, I wouldn't  
25 think so.

1 MS. DAVIES: Because you know the  
2 defense has the right to put the rest in if they  
3 want to.

4 THE PROSPECTIVE JUROR: Yes.

5 MS. DAVIES: Is that okay with you?

6 THE PROSPECTIVE JUROR: Yes.

7 MS. DAVIES: Another thing that can  
8 come up in any criminal case where there is a  
9 statement of the defendant offered into evidence  
10 has to do with whether his statement was given  
11 voluntarily. There are a number of requirements  
12 under the law that the police must conform with  
13 to be sure that a statement is given  
14 voluntarily. Anybody ever heard of Miranda  
15 warnings? If anybody watches TV -- you have the  
16 right to have an attorney. You have the right  
17 to remain silent. Anything you say will be  
18 used against you in court. Et cetera, et  
19 cetera. These are requirements under the  
20 constitution and they are also requirements  
21 under our state law. Anytime a statement of a  
22 defendant is offered into evidence you may very  
23 well get a charge from the judge at the  
24 conclusion of the trial that tells you -- and  
25 remember, this has to do with a statement that

1 was offered. You have read it. You have seen  
2 it. You know what is in it. The judge then at  
3 the end of the trial will tell you: Now, jury,  
4 this is one of those rare situations where you  
5 get to decide whether that statement should be  
6 used as evidence. You have got to be convinced  
7 that it was given voluntarily. Now, I mean,  
8 one kind of situation might be you might hear --  
9 again I am going to use an extreme example, but  
10 you could hear testimony from a police officer  
11 who gets up there and tells you: Well, we  
12 tortured this man for a week before we got his  
13 statement. You might very well conclude under  
14 circumstances like that this was not really  
15 voluntary. On the other hand, the judge is  
16 also going to tell you that all those Miranda  
17 warnings have to be given, and he will set them  
18 out for you, he will list them one, two, three,  
19 four, five. Every one of them has to be given.  
20 You could have a situation where you have heard  
21 a rookie cop testify and say: Well, I didn't  
22 have my card with me, I couldn't remember, and I  
23 didn't tell him all those warnings or I left out  
24 one of them or whatever. If you were in a  
25 situation where you had heard evidence and you

1       are not convinced that it was voluntary, the  
2       judge will tell you you have got to disregard  
3       that statement that you heard. In other words,  
4       it's kind of like unringing a bell. There is  
5       no erase button in your brain. It's not a  
6       matter that you can forget it. And nobody is  
7       suggesting that you can forget. But you would  
8       have to go through a process of mental  
9       discipline. If you had heard evidence and you  
10      are not convinced that it's voluntary, you would  
11      have to throw it out, look at the rest of the  
12      evidence and decide without that statement is  
13      there enough other evidence to convict this  
14      person. Of course, if there is enough other  
15      evidence and you are convinced by that other  
16      evidence beyond a reasonable doubt, you could  
17      find the person guilty. However, if it's a  
18      situation where you have heard evidence and you  
19      are convinced that it's not voluntary, that you  
20      must disregard that statement, you would throw  
21      it out, you look at the rest of the evidence  
22      and, hey, this is a tough situation. Maybe  
23      there is not enough evidence there. Maybe  
24      there is no other evidence there. Let's use the  
25      most extreme example. The only evidence I have

1           brought you was his statement. So, obviously,  
2           if you decide it wasn't voluntary and you throw  
3           it out, you would be in a situation of, once you  
4           disregarded it, of looking over here, there is  
5           no other evidence on the table. You would have  
6           to find him not guilty. It would be difficult  
7           under a situation where you have read a  
8           statement that maybe confesses his guilt. But  
9           that is exactly what the judge will tell you  
10          that you have to do if you were presented with  
11          that kind of situation. It would be each  
12          individual juror's decision in their own mind  
13          whether it was voluntary and whether they should  
14          consider that statement. Can each of you do  
15          that? Can you follow that instruction? I need  
16          for you to be sure that you can. You know, in a  
17          situation like that, it may be that twelve  
18          jurors would look at it, if it's not a clear-cut  
19          fact situation, one juror may think it was  
20          voluntary and consider the statement, another  
21          juror may think, no, it wasn't voluntary, I am  
22          not going to consider the statement, but look at  
23          the rest of the evidence, and I don't think  
24          there is enough evidence otherwise. It's a  
25          really tough one, that extreme situation where

1 there is no other evidence at all, and in that  
2 situation you would have to find not guilty.  
3 Okay?

4 THE COURT: Ms. Davies.

5 (Off the record bench conference)

6 THE COURT: Ladies and gentlemen, we  
7 are going to take about ten minutes for a  
8 break. The snack shop on the first floor is  
9 still open in case you need to get some kind of  
10 caffeine fix down there. The restrooms are on  
11 this floor. Let's take ten or fifteen minutes.

12 (Recess; after which, the following  
13 proceedings were had:)

14 MS. DAVIES: I was really nearly  
15 through. I am sure y'all are glad for the  
16 break, anyway.

17 A couple of things I do want to touch  
18 on. From looking over your questionnaires, I  
19 know that a number of you expressed concern  
20 about early release. I think the judge has  
21 already mentioned to you that parole, early  
22 parole is something that you cannot consider in  
23 reaching your verdict in deciding punishment.  
24 It's something that is outside our control. So,  
25 if you have a strong feeling about that, it's

1 something that you would have to deal with with  
2 your legislator, through some other part, make  
3 some changes some other way. My main concern is  
4 to be sure that each of you would, despite any  
5 feelings that you might have, that you would  
6 follow the judge's instruction and not let those  
7 feelings interfere or influence your decision in  
8 sentencing in this case or in any case. Can you  
9 follow those instructions? Assure us that you  
10 can do that. Okay.

11 One of the other things that, I mean,  
12 the judge and I both have touched on a number of  
13 the protections that any defendant has when they  
14 come in here in the courtroom, and one of them  
15 is that presumption of innocence. It doesn't  
16 mean he didn't do it. It means that he has a  
17 protective bubble around him at this point. I  
18 have got to bring evidence to the courtroom to  
19 convince the jury beyond a reasonable doubt.  
20 Once I have brought evidence to court, that  
21 bubble bursts, once you are convinced beyond a  
22 reasonable doubt of guilt. But as you sit there  
23 right now, the bubble is still in place. We  
24 need to be sure that each of you will respect  
25 that constitutional right and presume him to be

1           innocent at this point prior to hearing any  
2           evidence. Can you do that?

3           As I said at the beginning, I am going  
4           to save all -- you know, it's a two stage trial,  
5           and the second stage of trial is where you deal  
6           with these questions that determines whether or  
7           not a death penalty is given. I am going to  
8           save most of my conversation in that regard to  
9           when we talk individually. But as you sit here  
10          right now today, I do want to know one thing,  
11          and that is whether there is anyone here who  
12          knows already that they could never ever be a  
13          part of a jury that gave the death penalty. I  
14          know a couple of you answered that questionnaire  
15          to suggest that that is the way you feel. Is  
16          there anyone who feels like they simply could  
17          not personally participate in a verdict that was  
18          going to result in the death penalty? Anyone  
19          feel that way? Does anybody have any questions  
20          of me? Thank you.

21

22

23

24

25

1                   VOIR DIRE EXAMINATION BY THE DEFENSE  
2                   BY MR. STAFFORD:

3                   May it please the court.

4                   How many of y'all want me to talk for  
5                   an hour? Nobody. Hurt my feelings to the  
6                   bone.

7                   Mondays are often difficult times for  
8                   us lawyers, I think. If you are as tired as I  
9                   am, for example, you are tired to the bone. I  
10                  think often we spend the whole weekend doing our  
11                  honey-do's around the house and then, come  
12                  Monday morning, as jurors, you have other things  
13                  on your mind, such as what I didn't get  
14                  accomplished over the weekend or what is waiting  
15                  for me at work or where I need to go. So, I  
16                  realize that it's kind of difficult. And I have  
17                  been doing this for fifteen years, and I hate  
18                  Monday morning jurors. No offense against you  
19                  personally. You are so preoccupied by other  
20                  things, it's kind of hard to get y'all livened  
21                  up and let loose, let your hair down. Let me  
22                  suggest something to you. A lot of you have  
23                  never been into a courtroom before. I think  
24                  when you come here you see -- this courtroom  
25                  doesn't have -- but normally you have the

1 American and state flag and you see a judge, and  
2 judges are people that, you know, from birth we  
3 are taught to respect and we are taught to put  
4 them up on a pedestal up here and whatever they  
5 say we take as gospel. You hear of the  
6 prosecutor. You are programmed from birth,  
7 when you start watching television, that  
8 prosecutors uphold the law, they do good and  
9 they wear the white hat and they do all of this.  
10 I know that you are programmed from your  
11 television that defense lawyers are a bunch of  
12 slime balls who go around and get horrible  
13 people off for crimes that they have committed.  
14 We all have these preconceived ideas. So what  
15 I really want -- I am not going to waste my time  
16 or waste your time going through a litany of  
17 things whether or not you can keep an open mind  
18 or whether or not you will keep an open mind.  
19 Sometimes I feel like we almost give you such a  
20 pep talk and a pep rally that you could almost  
21 walk out with the American flag and say I am a  
22 law-abiding citizen and I am going to uphold the  
23 law and yea, yea, yea. It's kind of like a pep  
24 rally up here. Really, what we are trying to  
25 accomplish is real simply put. I am going to

1       be just as up front with you as you would be up  
2       front with me if I was sitting on your living  
3       room couch in your house because that is when  
4       your guards are down and that is when you are  
5       going to tell it like it is. There ain't going  
6       to be any beating around the bush or you are  
7       afraid of the prosecutor, you are going to tell  
8       me what is down here and how you feel about  
9       things. That is what you are going to tell  
10      me. That is what we want. If we could, when  
11      you come back on voir dire, individual voir  
12      dire, try to relax, try to assume you are in the  
13      confines of your home and also try to be just as  
14      honest and candid with us as you possibly can.  
15      Because I promise you, if I had everyone of you  
16      raise your hand, everyone of you will tell me  
17      you will be fair. Well, what we have found the  
18      last fifteen or twenty years of jury selection  
19      is people want to be fair. And what makes  
20      jurors defensive, we all have defensive  
21      mechanisms about ourselves, and one of the first  
22      things that makes jurors defensive is when  
23      someone suggests to them that they couldn't be  
24      fair and follow the law. You will say  
25      pointblank yes I will keep an open mind and I am

1 going to be fair, when we really haven't  
2 discovered how you feel about anything or how  
3 you feel about the death penalty or how you feel  
4 about someone not testifying because we all know  
5 when we come in to make a decision where the  
6 discretion is yours, you are the discretionary  
7 person who has to make the decision, what we  
8 know and you know, when you are truthful to  
9 yourself, is what you believe and what you think  
10 and your biases and prejudices, that is what is  
11 going to regulate how you vote. The law will be  
12 given to you, but there is a lot of us that have  
13 such strong opinions and gut reactions about  
14 certain laws that it will affect you when it  
15 comes to decision making time. And as you know  
16 -- and when y'all go back home tonight and what  
17 I want you to know about, this is not  
18 television. This is not -- this is not a dress  
19 rehearsal, because the way you feel and believe  
20 is going to determine whether my client lives or  
21 dies. We are that close. And your attitudes  
22 and your thoughts. So when you come back,  
23 because often I think what we have covered is  
24 whether or not you can follow the law. Again,  
25 everybody wants to follow the law. Everybody

1       wants to say yes, I am a law-abiding citizen or  
2       I wouldn't be here.    But it takes often more  
3       courage and more stamina and more backbone to  
4       stand up and say I disagree with that law, which  
5       is nothing wrong with that.    You have the right  
6       to say that.    It takes more courage and shows  
7       you a much better of a person to say I don't  
8       like that law, it's going to influence my  
9       decision, et cetera, et cetera.   If you feel  
10      that way, you are entitled to let us know that.  
11      True, you may keep an open mind.    True, you  
12      will want to follow the law if you are in that  
13      situation; but, true, you know you didn't fall  
14      off the turnip truck last night, and you may  
15      have been born at night but you know your  
16      attitudes and your philosophies will affect how  
17      you approach things.   And the hypothets often  
18      are misleading that we give you because the  
19      ultimate decision and what we really I think  
20      every one of you have kind of soaked into, what  
21      we are dealing with here is a capital murder  
22      case.   That means my client has been charged  
23      with capital murder.   And if he is found guilty,  
24      there is only two possible punishments, life or  
25      death.   We need to know your attitudes.   There

1       is a bunch of jurors who believe once I have  
2       passed that hurdle, once I find someone guilty  
3       of intentionally taking someone's life, there is  
4       not a doubt in my mind that he did that, there  
5       is only one punishment in my mind that I feel  
6       like is justifiable, and that is death. He took  
7       somebody else's life, he took two people's lives  
8       or he killed a police officer or he took a life  
9       during a burglary, in my opinion there is only  
10      one just punishment. That is death. We need to  
11      know that. Don't feel guilty by feeling that  
12      way. That is why we are the country that we  
13      are. That is why we have Reganomics and  
14      Bushanomics, I guess, and if we Democrats are  
15      lucky we are going to have a little  
16      Arkansasanomics.

17           Also, on the hypothet as far as lesser  
18      includeds. You have to understand we are not  
19      going to be dealing with a husband who pulls the  
20      plug on somebody's wife. We are dealing with  
21      someone who is charged with capital murder and  
22      something comes up within that case that would  
23      give you the benefit of determining whether or  
24      not he is guilty of murder versus capital  
25      murder. Because it may be in a situation where

1 if it was a burglary/murder you may, after  
2 examining the evidence, say, yes, it was an  
3 intentional murder, it was an unjustifiable  
4 killing, but there is no evidence to convince me  
5 beyond a reasonable doubt that there was a  
6 burglary. He didn't go in there with the intent  
7 to commit burglary. It could be numerous  
8 things. He didn't go in there with any intent  
9 to kill, any kind of felony. So when we talk  
10 about low end versus the high end, you have to  
11 remember you are coming from the high down to  
12 the next level. We are not asking you what you  
13 would do in a situation because, that is not the  
14 kind of case we are dealing with. Same way,  
15 capital murder case, I am trying to save my  
16 life, I don't take the stand and testify. Some  
17 jurors feel like: Hey, pardner, in a close  
18 case, when your life is on the line, we expect  
19 to hear from you. And if it's a close case, I  
20 am going to go with the State because you didn't  
21 testify because I ain't going to give you the  
22 benefit of the doubt. Nothing wrong with  
23 feeling that way. You have the right to feel  
24 that way. But if you are a defense lawyer, sure  
25 would be glad to know that if you didn't put

1       your client on the stand. Those are the things  
2 I want you to level with us and tell us about.

3                   And, also, another thing is the burden  
4 of proof. We kind of skate on that every now  
5 and then, but I think all of us have the  
6 intelligence to realize, especially you history  
7 buffs know that our government has always placed  
8 the burden on the state or the government to  
9 prove beyond a reasonable doubt that the people  
10 did what the state or the government said you  
11 did. Just because a prosecutor or an assistant  
12 U. S. Attorney says something ain't so doesn't  
13 mean it ain't so. Just because U. S. Attorney  
14 thinks something is a lie doesn't mean it's a  
15 lie. They have to offer you some sort of  
16 physical, whether from the witness stand,  
17 whether it's some sort of documentation or some  
18 sort of evidence to support their theory because  
19 basically Our Honor will tell you that what I  
20 say and what a prosecutor says is not evidence.  
21 The only evidence there is is what you hear from  
22 the witness stand. And you judge that evidence  
23 and give it whatever weight you want to. Just  
24 because I say something is a lie doesn't mean  
25 it's a lie and vice versa. We have to prove it

1 to you that it's a lie or offer some sort of  
2 alternative theory through the witness stand.

3 MS. DAVIES: Your Honor, the jury  
4 decides what is credible in terms of evidence.

5 MR. STAFFORD: By all means. That is  
6 your role.

7 MS. DAVIES: I object to suggesting  
8 there has to be evidence offered as to the truth  
9 or veracity of any particular witness.

10 THE COURT: Sustained.

11 MR. STAFFORD: I am suggesting that  
12 the burden of proof is on the State. And often  
13 the government doesn't like something that is  
14 introduced, so they suggest to you that it's a  
15 lie, when there is no iota of evidence to  
16 support that. The only basis that serves the  
17 premise that it's a lie is the government or the  
18 state prosecutor's statement it's a lie. There  
19 is nothing else to justify it. My point is  
20 that doesn't necessarily mean it's a lie. That  
21 is not a lie until they prove to you beyond a  
22 reasonable doubt through the witness stand that  
23 it is a lie. Okay?

24 MS. DAVIES: Your Honor, I have to  
25 object to the way this is being presented. The

1       jury decides on the credibility of the witness  
2       based on that witness' testimony, not on what I  
3       say about the witness or what the defense says  
4       about the witness, and neither of us have to  
5       prove--

6                     THE COURT: I am going to remind you,  
7       ladies and gentlemen, probably for the first of  
8       many times, that nothing the attorneys are  
9       telling you is evidence in this case, not when  
10      they are talking to you now or giving opening  
11      statements or arguing the case to you. The  
12      evidence is going to come on what I am going to  
13      allow in through testimony from the witnesses'  
14      testimony on the witness stand. And you do  
15      individually determine credibility of every  
16      witness who testifies.

17                     Proceed, please.

18                     MR. STAFFORD: Thank you, Judge.

19                     Actually that is all I am going to  
20      say. I am through. I would like to spend my  
21      time with you when you come back on individual  
22      basis. I hope we can share our respective  
23      attitudes. I don't want you to be put on a  
24      guilt trip by expressing yourself or how you  
25      feel, that there is something wrong with that.

1       If you don't think you can follow a particular  
2 point of law, don't feel threatened or feel bad  
3 about that. You have the right to express what  
4 you want to express. I thank you.

5           THE COURT: Ladies and gentlemen, I  
6 ask you to step out into the hallway. We will  
7 probably be back with you within the next ten  
8 minutes or so to let you know when you are  
9 coming back.

10           (The panel of prospective jurors  
11 leaves the courtroom)

12           THE COURT: It's my understanding that  
13 by agreement of all parties the following  
14 prospective jurors are being excused:  
15           Prospective juror number one on panel number  
16 five, Ms. Keys; number five, Ms. Sparks; number  
17 seven, Ms. Tennebaum; number eight, Mr. White;  
18 number twelve, Mr. Gafrick; and number sixteen,  
19 Mr. Ratcliff.

20           Is that your agreement, Ms. Davies?

21           MS. DAVIES: It is.

22           THE COURT: And yours, Mr. Stafford?

23           MR. STAFFORD: Yes.

24           THE COURT: Yours, Mr. Rhoades?

25           THE DEFENDANT: Yes, Your Honor.

1                   THE COURT: Bring them in.

2                   (Jurors enter the courtroom)

3                   THE COURT: Ladies and gentlemen, six  
4 of you aren't coming back to visit with us.  
5 This gentleman is passing out slips right now.  
6 As I call out your name, the following people  
7 may be excused. Number one, Ms. Keys; number  
8 five, Ms. Sparks; number seven, Ms. Tennebaum;  
9 number eight, Mr. White; number twelve, Mr.  
10 Gafrick; number sixteen, Mr. Ratcliff. Thank  
11 you for coming.

12                  Mr. Drury has not been excused.

13                  THE COURT: For the remainder of you,  
14 you have some slips or are about to get some  
15 slips that have days and times for you to be  
16 back here. Go ahead and pass those out, and I  
17 will confirm. You are not to leave yet. I have  
18 to give you some additional instructions.

19                  Number two, Ms. Polk, at 9:30  
20 tomorrow, Tuesday. Number three, Mr. Ritch,  
21 tomorrow morning at 9:30 also. Ms. Bruckler,  
22 number four, tomorrow at one p.m. Mr. Drury,  
23 number six, tomorrow at 1:00 p.m. Mr. Ketchie,  
24 tomorrow at two p.m. On Wednesday morning,  
25 there is only going to be one person, Mr. Davis,

1 at 9:30. Mr. Raeburn Davis at 9:30. Mr.  
2 Curtis Ray Davis is at 1:15 on Wednesday. Also  
3 Wednesday at 1:15 Mr. Y'Barbo. At 2:30  
4 Wednesday, Mr. Vervalin. Thursday morning at  
5 9:30, Ms. Ackerman and Mr. Luce. Thursday at  
6 1:00 p.m. Ms. Gray and Mr. Garcia. At 2 p.m.  
7 Thursday, Ms. Wright. On Friday at 9:30 Ms.  
8 Adams and Mr. Brooks.

9 Those slips y'all have have the same  
10 information. Anybody have anything different?

11 The previous admonitions are still in  
12 effect, that is, you are not to discuss this  
13 case among yourselves or with anyone else  
14 including spouses. You are not to discuss  
15 anything on the questionnaire. I realize you  
16 have to tell your spouses and employers that you  
17 are down here for selection on a capital murder  
18 case. Again, don't let them impart any  
19 information or misinformation to you regarding  
20 murder, capital murder or how they think the  
21 system works or doesn't work or anything else.  
22 The attorneys have been instructed not to engage  
23 you in conversation. If they see you in the  
24 hallway or in the elevators, they are not going  
25 to be talking to you, but they may nod in

1 recognition, nod hello, that kind of thing. If  
2 anybody attempts to talk to you about the case,  
3 bring it to our attention immediately. Tell me,  
4 tell the clerk, tell the bailiff who has you in  
5 charge. I don't anticipate you are going to see  
6 anything in the media regarding this case.  
7 They commonly don't cover these cases until the  
8 case is at least in trial. Don't make any kind  
9 of independent investigation. That is to say  
10 don't go read any law you think might apply in  
11 this case. Do not attempt to find out exactly  
12 which case it is we are trying. When you come  
13 down, I don't care where you park as long as you  
14 park where you retain your car keys. There are  
15 some attendants who keep your car keys. Don't  
16 do that. Move to another parking lot where you  
17 retain your own car keys.

18 Any requested instructions, Mr.  
19 Stafford?

20 MR. STAFFORD: Other than possibly  
21 advise the jurors that they may have long waits.

22 THE COURT: Ms. Davies?

23 MS. DAVIES: That is all.

24 THE COURT: You may well have some  
25 long waits. If you are called down for the

1 morning session, it hasn't been unusual for the  
2 second person, if we really get active with the  
3 first one, not to be called to the stand until  
4 eleven o'clock or even after. Bring reading  
5 material, newspapers, magazines, books. When  
6 you come back, you don't have to wait in the  
7 hallway. We want you to have a seat in the  
8 anteroom out here. The doors will normally be  
9 closed if we are in progress. You can go in  
10 there and have a seat. You can sit there and  
11 read. You can bring candy or whatever you  
12 need, cokes, coffee. Sometimes you will be  
13 seated for a long time. As I said earlier, at  
14 the end of the session we will let you know  
15 whether or not you have been selected to serve  
16 as a juror in the case. If you are not selected  
17 to serve, we will excuse you for all purposes.  
18 If you are selected to serve as a juror, we will  
19 give you some additional instructions at that  
20 time.

21 Any questions at the moment?

22 You come back to this room, not to our  
23 courtroom but to this room.

24 Anybody have any questions about the  
25 times you are supposed to be here? If there is

1 nothing else, you are excused until your  
2 assigned times and days.

3 Ms. Polk and Mr. Ritch, we will see  
4 you tomorrow at 9:30.

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